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fore the court can take time to consider the cause and render judgment in vacation as provided by Code 1904, § 3427, without the consent of the parties.

**4. Same.**—A decree which is void because rendered in vacation without the consent of the parties, as required by Code 1904, § 3427, is not validated by proceedings in vacation to correct misrecitals therein, as provided by section 3451.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 30, Judgment, § 40.]

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STIMMEL, v. BENTHALL, et al.

March 12, 1908.

[60 S. E. 765.]

**1. Writ of Error—Decisions Reviewable—Finality.**—Plaintiff moved for judgment against defendant and his surety, to which the surety pleaded a set-off of another debt owing by plaintiff to him. After trial the court entered an order that the claim of his surety was just, and that he recover from plaintiff \$300, subject to a credit of \$180 claimed by defendant surety against plaintiff, and for costs. Held, that such order constituted a final disposition of the controversy, subject to review on writ of error.

**2. Pleading—Proceedings by Motion—Plea of Set-Off.**—Strict rules of pleading do not apply to proceedings by motion and a defense by way of set-off.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 39, Pleading, § 290.]

**3. Writ of Error—Objections to Pleadings—Time.**—Defendants in error cannot make preliminary objections to pleadings for the first time on a writ of error.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 2, Appeal and Error, §§ 1221-1225.]

**4. Set-Off—Claims Subject—Statutes.**—Code 1887, § 3298 [Va. Code 1904, p. 1737], provides that in a suit on any debt a set-off shall be allowed if the persons against whom such claim is stand in the relation of principal and surety, and the person entitled to the set-off "is the principal," and section 3299 [page 1740] declares that in any action on a contract the defendant may plead failure of consideration, fraud, breach of warranty, or any other matter which would entitle him to damages at law from the plaintiff or the person under whom plaintiff claimed, or to relief in equity, against the contract, etc. Held, that section 3299 did not alter or modify section 3298, but should be construed in *pari materia* therewith, and therefore there could be no set-off of a purely legal demand owing by plaintiff to a surety alone on the debt plaintiff was seeking to enforce under either section.